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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 DISABILITY RIGHTS WASHINGTON,

No. C23-1553-JCC

10 *Plaintiff,*

11 v.

[~~JOINT PROPOSED~~] PROTECTIVE
ORDER

12 WASHINGTON STATE DEPARTMENT OF
13 CORRECTIONS and CHERYL STRANGE,
Secretary of the Department of Corrections, in her
official capacity,

14 *Defendants.*

15 BEFORE THE COURT is the parties' Joint Proposed Protective Order (Dkt. No. 2-2). The
16 parties—Plaintiff Disability Rights Washington (“DRW”) and Defendants Washington State
17 Department of Corrections (“Department”) and Washington State Department of Corrections
18 Secretary Cheryl Strange—move this Court to approve the protective order so that the parties shall
19 preserve the confidentiality of certain documents, testimony, and information produced in this
20 litigation.

21 The Court has reviewed the record and files herein, the completed briefing, and is fully
22 informed.

23 The parties' protective order is **GRANTED**.

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[~~JOINT PROPOSED~~] PROTECTIVE ORDER - 1

Disability Rights Washington
315 5th Avenue South, Suite 850
Seattle, Washington 98104
(206) 324-1521 • Fax: (206) 957-0729

1 this litigation shall be regarded as Confidential Information and subject to this Protective
2 Order.

3 **B. DEFINITIONS**

4 4. “Confidential Information” shall refer to Protected Health Information and
5 security information. Confidential Information does not refer to de-identified or aggregate
6 information derived from Protected Health Information that cannot be identified with a
7 specific individual(s).

8 5. “Documents” means all written, recorded or graphic material whatsoever,
9 including, but not limited to, materials produced pursuant to Civil Rule 34, by subpoena or
10 by agreement, deposition transcripts and exhibits, interrogatory answers, responses to
11 requests for admission, and any portion of any Court papers that quote from any of the
12 foregoing.

13 6. “Protected Health Information” is defined by the Health Insurance
14 Portability and Accountability Act of 1996 (“HIPAA”), 45 C.F.R. § 160, *et seq.*, as
15 “individually identifiable health information” that is recorded in any form or medium that
16 “[r]elates to the past, present or future physical or mental health condition of the individual;
17 the provision of health care to an individual.” 45 C.F.R. 45 §160.103. HIPAA prohibits
18 covered entities from disclosing Protected Health Information, except under certain limited
19 circumstances. 45 C.F.R. § 164.502. The Defendants provide health care to people in the
20 Department’s prisons and are covered entities. Thus, the medical and mental health records
21 of people incarcerated in the Department’s prisons are considered Protected Health
22 Information. Similarly, Washington’s Healthcare Information Act, RCW 70.02, provides
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1 that Health Care Information shall generally not be disclosed by a health care provider
2 except for, among other things, with patient authorization or by court order and
3 accompanying protective order. Under RCW 70.02.010(17), "Health Care Information"
4 means "any information, whether oral or recorded in any form or medium, that identifies
5 or can readily be associated with the identity of a patient and directly relates to the patient's
6 health care, including a patient's deoxyribonucleic acid and identified sequence of chemical
7 base pairs. The term includes any required accounting of disclosures of Health Care
8 Information." For purposes of this protective order, the term "Protected Health
9 Information" shall include healthcare information as defined and protected by chapter
10 70.02 RCW.

11 7. "Security information" shall mean all documents that would threaten the
12 safety and security of a person or institution if disclosed without protective conditions.
13 Such information includes, but is not limited to: information that could lead to the
14 identification of a person's security threat group status, affiliation, or activities; information
15 that reveals specific security threats associated with the operation and activities of security
16 threat groups; information that identifies the number of security threat group members,
17 affiliates, or associates in Department of Corrections facilities; information related to an
18 individual's past or present protective custody status; information related to prison
19 intelligence and investigations; information related to confidential informants; information
20 related to "keep separate" orders or other safety restrictions on an individual's housing
21 placement within the Department of Corrections; and any other information reasonably
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1 believed to implicate safety and security concerns for the Department of Corrections or any
2 individual.

3 8. "Litigation" shall mean this action, a settlement or injunction arising from
4 this action, any appeals of this action, and any action related to the enforcement or
5 monitoring of any injunction or other relief obtained in this litigation.

6 9. "Qualified Person" shall mean a person identified in Paragraph 15 to whom
7 Confidential Information may be disclosed by the Parties.

8 **C. DESIGNATION AND USE**

9 10. The volume of records in this matter precludes document-specific
10 designation of Confidential Information. Plaintiff's counsel will identify and redact such
11 information when documents are filed with the Court or will file documents containing
12 such information under seal. If there are questions or disagreements, the parties will in
13 good faith attempt to resolve these before seeking Court involvement.

14 11. Any Confidential Information filed with the Court shall be filed under seal,
15 labeled with a cover sheet bearing the case name and number along with the following
16 statement: "This document is subject to a protective order issued by the Court and shall not
17 be copied or examined except in compliance with that order." Documents so labeled shall
18 be kept by the Clerk of the Court under seal and shall be made available only to the Court
19 or counsel. Upon failure of the filing party to file Confidential Information under seal, any
20 party may request that the Court place the document under seal. The procedures of Local
21 Rule 5(g) shall be followed.
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1 12. When the parties file pleadings, motions, affidavits, declarations, deposition
2 transcripts, briefs, or other documents with the Court that refer to information covered by
3 this Protective Order, the parties must ensure that the individuals' names and personally
4 identifiable information (*e.g.*, name, date of birth, ID numbers, locations, case numbers)
5 are not used and rather must replace each name with non-identifiable initials or other
6 designation (*e.g.*, "A.B." or "Exemplar 1"). In the event a party files pleadings with the
7 Court that refer specifically to a person whose Confidential Information is the subject
8 matter of this Protective Order and whose identifying initials or letters have not yet been
9 agreed to, that party must notify opposing counsel as to the identity and corresponding
10 designation of the individual.

11 13. A party may, subject to the rules of evidence and order of the Court, use any
12 confidential information for any purposes at trial or at any hearing before a judicial officer
13 in the above-entitled action. Any confidential information used in any court proceeding
14 shall not lose its confidential status through such use unless the Court orders otherwise.

15 **D. PROTECTION FROM FURTHER DISCLOSURE**

16 14. All confidential records shall be controlled and maintained in a manner that
17 precludes access by any person not entitled to access under this Protective Order.

18 15. Confidential Information shall be produced to all counsel of record for the
19 parties, and their support staff, including paralegals, legal interns, and legal assistants.

20 16. Confidential Information may be disclosed only to the following persons
21 (hereinafter referred to as "Qualified Persons"):
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- 1 a. Counsel of record for the parties, and employees and agents of such counsel who
2 are assisting such counsel in this litigation;
- 3 b. Independent outside experts or consultants engaged by counsel in this litigation,
4 and such persons' employees and agents;
- 5 c. Any director, officer, or employee of a party who is requested by counsel for such
6 party to work on this litigation;
- 7 d. Any deposition or trial witness;
- 8 e. Any person expressly named and agreed to in writing by Counsel for the parties;
- 9 f. The Court and court personnel;
- 10 g. Stenographic and videographic reporters engaged in such proceedings;
- 11 h. Any person who authored, received, or is entitled to receive under Defendant's
12 policy and applicable state and federal law the particular confidential information
13 sought to be disclosed; and
- 14 i. When a DRW constituent consents to the disclosure of their own Protected Health
15 Information, Plaintiff's counsel may do so in accordance with that consent provided
16 that the documents have been removed of all personally identifiable information of
17 any other individual currently or formerly under department jurisdiction.

18 17. Except as authorized by this Order, Confidential Information respecting one
19 individual currently or formerly in Department custody shall not be disclosed to or
20 discussed with any other individual currently or formerly in Department custody except
21 after order of the Court, consent of opposing counsel, or failure of opposing counsel to
22 object in writing after ten days' notice of intent to make specific disclosure.
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1 18. Confidential information shall not be disclosed to persons described in
2 Paragraphs 14(b), (c), (d), or (e) unless or until such persons have been provided with a
3 copy of this Protective Order and have agreed in writing to abide by and comply with the
4 Order.

5 19. Except as authorized by this Protective Order, every Qualified Person
6 provided copies of or access to Confidential Information pursuant to this Order shall keep
7 all such materials and information, and any copies, notes, extracts, summaries, or
8 descriptions of such material, within their possession and control, shall treat all such copies,
9 notes, extracts, summaries, or descriptions of such material as confidential, shall take all
10 necessary and prudent measures to maintain the confidentiality of all such materials or
11 information, and shall not disseminate such Confidential Information, except as permitted
12 by this Order.

13 20. Should any confidential information be disclosed, through inadvertence or
14 otherwise, to any person not authorized to receive it under this Protective Order, then the
15 disclosing person(s) shall promptly: (a) identify the recipient(s) and the circumstances of
16 the unauthorized disclosure to the relevant producing person(s); and (b) use best efforts to
17 bind the recipients to the terms of this Protective Order. No information shall lose its
18 confidential status because of its disclosure to a person not authorized to receive it under
19 this Protective Order. If timely corrected, an inadvertent failure to designate qualified
20 information or items does not, standing alone, waive the designating party's right to secure
21 protection under this agreement for such material. Upon timely correction of a designation,
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1 the receiving party must make reasonable efforts to ensure that the material is treated in
2 accordance with the provisions of this agreement.

3 **E. PRODUCTION OF CONFIDENTIAL INFORMATION**

4 21. Defendants shall provide Plaintiff's Counsel with Confidential Information
5 as necessary for this litigation. Such access shall include log-in access to any electronic
6 health record system implemented by Defendants. All such records shall be deemed
7 confidential under this Order.

8 **F. STORAGE AND DESTRUCTION OF CONFIDENTIAL MATERIALS**

9 22. Within thirty (30) days after the conclusion of the above-entitled action,
10 including, without limitation, any appeal or retrial, all confidential information, including
11 copies, extracts, or summaries, shall be destroyed or retained in a secure place in a
12 confidential manner consistent with the parties' respective internal procedures. As to those
13 materials containing confidential information, but constituting or reflecting counsel's work
14 product, all such work product and all copies shall either be destroyed or retained by
15 counsel in a secure place, subject to this Protective Order.

16 **G. PRESERVATION OF RIGHTS AND PRIVILEGES**

17 23. Nothing in this Order shall prevent the Parties or their employees or agents
18 from having access to Confidential Information to which they have access in the normal
19 course of their official duties. Nothing in this Order shall impact Plaintiff DRW's lawful
20 rights, obligations, or authority, including but not limited to under 42 U.S.C. § 10801, *et*
21 *seq.*, as amended; 42 U.S.C. § 15041, *et seq.*; and the regulations promulgated thereunder.

1 Nothing in this order shall limit any Party's right to disclose to any person, or use for any
2 purpose, its own information and documents.

3 24. Nothing in this Protective Order waives any objection related to any
4 material. By stipulating to this Protective Order, no party waives any right it may have to
5 withhold or redact information protected from disclosure by the attorney-client privilege
6 or other applicable privilege, law, or regulation, or to seek appropriate protective orders
7 respecting documents asserted to be subject to any such privilege, doctrine, protection, law,
8 or regulation.

9 25. The provisions of this order are without prejudice to the right of any party:
10 a) to apply to the Court for a modification of this order or further protective orders relating
11 to discovery in this litigation; b) to apply to the Court for an order removing the
12 Confidential Information designation from any document; c) to object to a discovery
13 request; or d) to apply to the Court for an order compelling production of documents or
14 compelling an answer to a discovery request.

15 **H. BINDING EFFECT**

16 26. This Protective Order shall be binding on the parties, any third parties that
17 agree to be bound by this Protective Order, attorneys of any party or third party to this
18 Protective Order, and the parties', third parties' and their attorneys' successors, executors,
19 personal representatives, administrators, heirs, legal representatives, and other persons or
20 organizations over whom or which the parties have control.

21 27. Upon conclusion of this litigation, the provisions of this Protective Order
22 shall continue to be binding.
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1 28. The provisions of this order shall remain in full force and effect until further
2 order of this Court.

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4 DATED this 17th day of October 2023.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

Presented by:

s/ Ethan Frenchman

Ethan D. Frenchman, WSBA #54255
Danny Waxwing, WSBA #54225
Heather McKimmie, WSBA #36730
Disability Rights Washington
315 5th Avenue S, Suite 850
Seattle, WA 98104
Tel: (206) 324-1521
Fax: (253) 627-0654
ethanf@dr-wa.org
dannyw@dr-wa.org
heatherm@dr-wa.org

Attorneys for Plaintiff

s/ Candie Dibble

Candie M. Dibble, WSBA #42279
Assistant Attorneys General
Corrections Division
P.O. Box 40116
Olympia, WA 98504-0116
Tel: (360) 586-1445
Candie.Dibble@atg.wa.gov

Attorney for Defendants

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Disability Rights Washington
315 5th Avenue South, Suite 850
Seattle, Washington 98104
(206) 324-1521 • Fax: (206) 957-0729